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Technology Center 2100

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In re Application of: David R. Tushie et al.)
Application No.: 09/416,252)
Filed: October 12, 1999)
For: SYSTEM AND APPARATUS FOR)
SMART CARD PERSONALIZATION)

**DECISION ON PETITION
UNDER 37 C.F.R. § 1.181 TO
WITHDRAW HOLDING OF
ABANDONMENT**

This is a decision in response to the petition under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment, filed May 29, 2001, in response to a Notice of Abandonment.

This application was held abandoned for failure to file a timely response to the Office action of mail date June 16, 2000. A Notice of Abandonment was mailed on March 22, 2001.

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office presumes that the communication was properly mailed to the address of record. This presumption may be overcome by showing that the Office communication was not received.

The relevant portion of MPEP § 711.03(c) states:

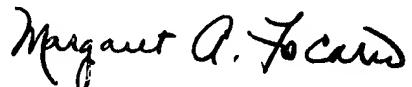
The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

In support of the petition, Applicant asserts that the Office action was not received, and that no record of said Office action was found in the Attorney's file for this application. Petitioner supplies a copy of a docket record consisting of 4 pages bearing the title "Office Actions Received 6/16/2000-9/16/2000" (dated 23-April-01).

Petitioner has not met the criteria set out in MPEP § 711.03(c). The 4 page listing, referred to as a "copy of the docket record", appears to be a computer generated report based on underlying records. No assertion is found in the petition indicating that the copy of the docket record provided represents the record or report "where the nonreceived Office communication would have been entered had it been received".

Accordingly, the petition is **DENIED**.

If the petitioner desires further review of this Decision, applicant should consider filing a Request for Reconsideration within 2 months of the mailing date of this Decision.



Margaret A. Focarino, Group Director
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